

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ENT INT'L REALTY CORP., H.P.S.O.N.Y., INC.,
N.Y.A.H., INC., R.C.F.H.P., INC., on behalf of themselves
and all others similarly situated,

Plaintiffs,

ORDER

-against-

20-cv-4277 (PKC)

ANDREW CUOMO, in his personal and official capacity as
Governor of the State of New York, BILL De BLASIO
in his personal and official capacity as Mayor of New York City
and THE NEW YORK CITY DEPARTMENT OF FINANCE,

Defendants.

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CASTEL, U.S.D.J.

Defendants Governor Andrew Cuomo, Mayor Bill De Blasio and the New York City Department of Finance have moved to dismiss the complaint. Plaintiffs, represented by counsel, has not opposed the motions. Plaintiffs' time to respond to the motions expired on August 28, 2020 and no request for an adjournment has been made to this Court.

Plaintiffs' Complaint seeks declaratory and injunctive relief relating to (1) enforcement of the New York State Governor's Executive Orders 202.8 and 202.28 which had imposed moratoria on evictions;¹ (2) demanding property taxes on July 1, 2020; and (3) imposing penalty and late fees on taxes that are due on July 1, 2020.

On June 29, 2020 Chief Judge McMahon issued a 37-page Order ruling on a challenge to Executive Order 202.28 under the Contracts Clause, the Takings Clause, the Petition

¹ Executive Order 202.8 was the first moratorium. Executive Order 202.28 extended the first moratorium and suspended sections 7-103, 7-107 and 7-108 of the General Obligations Law relating to security deposits.

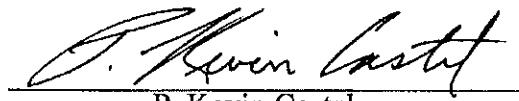
Clause and the Due Process Clause of the United States Constitution brought by owners of residential rental properties and condominium units rented to tenants. Elmsford Apartment Assocs., LLC v. Cuomo, 20-cv-4062 (CM) (Doc. 30). Chief Judge McMahon denied plaintiffs' motion for summary judgment and granted defendant's motion for summary judgment. For substantially the reasons set forth in the June 29 Order in Elmsford and the arguments of defendant Cuomo in his motion to dismiss, this Court concludes that this plaintiffs' challenge to Executive Order 202.28 or its predecessor Executive Order 202.8 fails to state a claim for relief.

With respect to so much of the complaint against Mayor De Blasio and the New York City Department of Finance that seeks to enjoin the collection of property taxes or imposition of penalties for failure to pay property taxes, the relief sought would appear to run afoul of the Tax Injunction Act ("TIA").² 28 U.S.C. § 1341 ("The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."). The Second Circuit has held that New York provides a "plain, speedy and efficient remedy" for constitutional challenges. Long Island Lighting Co. v. Town of Brookhaven, 889 F.2d 428, 431 (2d Cir. 1989). For this and other reasons asserted in the motion to dismiss of defendant De Blasio and defendant New York City Department of Finance, the motion will be granted.

Because defendants have made out a *prima facie* basis for dismissal of all claims and the plaintiffs have not come forward despite an opportunity to do so with any argument or reason why the Court ought not grant the motions, the motions to dismiss (Doc 28 and 31) are GRANTED. The Clerk shall enter judgment for the defendants and close the case.

² Plaintiffs assert an Equal Protection Clause challenge to a tax relief program open only to owners with one to three family homes and condos. The injunctive relief sought would run afoul of the TIA.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
September 9, 2020